Attorney-General for Ceylon v. *A. D. Silva* [1], their Lordships of the Privy Council said:

"All ostensible authority involves a representation by the principal as to the extent of the agent's authority. No representation by the agent as to the extent of his authority can amount to a 'holding out' by the principal."

In view of this authority, I hold that payment by the plaintiffs to Loke was not payment to the company.

I do not accept the plaintiffs' argument that if in fact no premium has been paid, the company cannot cancel the policy, for the company's rights vis-a-vis a defaulting policyholder cannot be less than their rights vis-a-vis a policyholder who has paid his premium. Nor do I accept the plaintiffs' argument that it is a condition of cancellation that a refund of the premium or a portion thereof must precede or accompany the notice to cancel. In my view the refund is only a consequence flowing from the act of cancellation. The words "and in such event [i.e., cancellation, the Company] will return" in the condition make this quite plain.

The letter dated 3rd May, 1961, from the company to the plaintiffs stated: "Unless the [premium] is remitted to us within seven (7) days from the date hereof, the policy will be cancelled....." The company's manager, D.W.1, said that on failure by the plaintiffs to remit within the stipulated seven days the policy was accordingly cancelled. This was done, according to the company's letter dated 6th July, 1961, to the plaintiffs' solicitor, on 11th May, 1961. To cancel this policy the company did two separate acts: first, they wrote the letter of 3rd May, 1961, and, secondly, they cancelled the policy on 11th May, 1961, after the expiry of the stipulated period. In my judgment this did not nullify the purported cancellation under condition 7 under which only a single act, namely, of sending the requisite notice was sufficient.

Accordingly I hold that by the time of the accident the policy had been effectively cancelled and was no longer in force.

For the above reasons I would dismiss this claim with costs.

Claim dismissed.

Solicitors: *Allen & Gledhill; George & Khoo.*

PUBLIC PROSECUTOR v. WONG YIN NAM

[A. Cr. J. (Ong J.) July 5, 1962]

[K.L. — Criminal Appeal No. 25 of 1962]

Gaming — Numbers lottery — Prevalence of — Hierarchy of operators — Main consideration — Common Gaming Houses Ordinance, 1953, s.4(1)(c).

Criminal Law and Procedure — Public lottery — Prevalence of offence — Sentence — Inadequacy.

The various types of offences as set out in paragraphs (a) to (h) of section 4(1) of the Common Gaming Houses Ordinance, 1953 cover an exceedingly wide range, and an amount of fine which is proper and reasonable for one may be inadequate or excessive for another. Nevertheless a fine of only 2% of the maximum is manifestly inadequate in the absence of special extenuating circumstances.

The position of the accused in the hierarchy of operators of the numbers lottery is the main consideration and not the smallness of the bets disclosed.

CRIMINAL APPEAL.

Mohamed Isa bin Ibrahim (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong J.: The appellant was, upon his own plea of guilty, convicted and fined the sum of $100 for an offence of assisting in carrying on a public lottery in contravention of section 4(1)(c) of the Common Gaming Houses Ordinance, No. 26 of 1953. The Public Prosecutor appeals against the inadequacy of the sentence on the grounds of prevalence of the offence, public scandal and the public interest. In my view, however, the only relevant consideration in this case is that the maximum punishment authorised by section 4(1) extends to imprisonment for 12 months or a fine of $5,000 or both. The various types of offences, as set out in paragraphs (a) to (h) cover an exceedingly wide range, and an amount of fine which is proper and reasonable for one may be inadequate or excessive for another. Each case therefore must be considered in the light of its own facts. Nevertheless, a fine of only 2 per cent of the maximum seems manifestly inadequate in the absence of special extenuating circumstances.

The numbers lottery is undoubtedly prevalent and also profitable. The position of the accused in the hierarchy of operators of this type of lottery is, in my view, the main consideration and not the smallness of the bets disclosed as the arrest might have occurred early in the day. The fact, however, that the appellant is a first offender, needs to be taken into account. Accordingly, I have increased the fine to $250 with a warning of the consequences of a second offence.

Sentence enhanced.

AIK TEONG TRADING CO. v. NATIONAL UNION FIRE INSURANCE CO.

[O.C.J. (Hepworth J.) July 9, 1962]

[Penang — Civil Suit No. 131 of 1961]

Insurance — "Warehouse to warehouse" policy of marine insurance — Loss of goods as a result of collision at sea — Waves caused by passing steamer — Whether loss due to perils insured against — Whether loss fortuitous — Institute Cargo Clauses (W.A.) of January 1, 1958 — Interpretation of — General principles of construction of marine insurance policies — Severance of contract — Whether value of goods lost can be calculated.

The plaintiffs were interested in a "warehouse to warehouse" policy of marine insurance made between the defendants and one C.T.C. of Bangkok whereby the defendants insured 7 cases of Siam Swallow Nests packed in the usual customary packings valued at $127,600 in the steamer *s.s. Hock Lee* at and from